

JUDGE CARTER

13 CV 0361

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
JAMEL VARGAS,

Plaintiff.

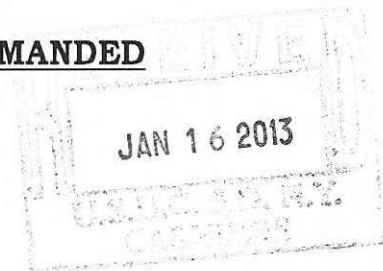
COMPLAINT

-against-

JURY TRIAL DEMANDED

THE CITY OF NEW YORK, DETECTIVE
ERIC ORTIZ Shield 03383 and
John Does 1-4

Defendants.
-----x



PRELIMINARY STATEMENT

1. This is an action brought pursuant to 42 U.S.C. § 1983 and New York state law alleging civil rights violation by the City of New York and individuals employed by the New York City Police Department ("NYPD"). Plaintiff alleges that, on February 24, 2012, NYPD officers employed in the Narcotic Boro. Manhattan North Division subjected him to false arrest, imprisonment, an illegal strip search, and fabricated evidence in violation of the Fourth, Sixth and Fourteenth Amendments to the United States Constitution and New York State law. Plaintiff seeks compensatory and punitive damages, declaratory relief, an award of attorney's fees and costs, and such other and further relief as the court deem just and proper.

JURISDICTION & VENUE

2. This action is brought pursuant to 42 U.S.C. § 1983 and the Fourth, Sixth and Fourteenth Amendments to the United States Constitution.

Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331 and 1343.

3. Plaintiff invokes the supplemental jurisdiction of this Court pursuant to 28 U.S.C. § 1367 to hear and decide his claims brought under New York state law.
4. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391 (b).

PARTIES

5. Plaintiff is a resident of the State of Pennsylvania. The events complained of occurred in New York City.
6. The City of New York is a municipal corporation organized under the laws of the State of New York.
7. Detective Erick Ortiz Shield 03383 and John Does 1-4 are members of the NYPD's Narcotic Boro. Manhattan North Division who were involved in the arrest of plaintiff and responsible for the torts arising out of plaintiff's arrest. These officers were acting under color of state law and in their capacities as NYPD officers at all relevant times herein. The officers are liable for directly participating in the unlawful acts described herein and for failing to intervene to protect plaintiff from unconstitutional conduct. The officers are sued in their individual capacities.

STATEMENT OF FACTS

8. On February 23, 2012, at approximately 6:20 A.M., at 1924 Second Avenue in Apartment 1F, in New York County, New York, several NYPD police officers, including Detective Erick Ortiz, of the Narcotic Boro. Manhattan North Division, executed a purported warrant at said place and time. The apartment was leased to Plaintiff's father, Diosdado Vargas, whom Plaintiff was visiting at the time.
9. On February 23, 2012, at approximately 6:20 A.M., Plaintiff was sleeping on the couch in the living room, when the front door was brought down and Defendant NYPD officer "rushed in", displaying NYPD shields and screaming "get down" "get down on the floor." NYPD police officers, including Detective Erick Ortiz, of the Narcotic Boro. Manhattan North Division, entered the apartment.
10. After seizing plaintiff in the apartment, Defendant Erick Ortiz, Shield 03383, and other NYPD officers pushed plaintiff backwards, causing pain to plaintiff lower back.
11. One of the officers then handcuffed plaintiff excessively tight causing marks on plaintiff's wrists and interfering with plaintiff's circulation and escorted plaintiff out of the apartment, to the hall way. When questioned by NYPD, plaintiff attempted to explain he was a visitor, sleeping in the living room, and had absolutely no knowledge of any contraband.

12. Plaintiff complained to the officers while in the hall way, that the handcuffs were painfully tight, but the officers ignored his complaints and claims of innocence.
13. Officers brought plaintiff to a police van.
14. One of the officers forcefully threw plaintiff into the police van causing plaintiff to fall and hit his face on the floor of the van.
15. Upon information and belief, NYPD police officers, including Detective Erick Ortiz, of the Narcotic Boro. Manhattan North Division recovered a control substances from a bedroom – which Plaintiff had no access to or nexus too.
16. Plaintiff was taken to the 25th Precinct for arrest processing.
17. At the precinct Plaintiff was unlawfully strip searched, ordered to squat, bend over and cough.
18. Nothing illegal was found on Plaintiff's person.
19. This strip search was illegal because Plaintiff had not committed a crime; Erick Ortiz Shield 03383, lacked reasonable suspicion to believe that plaintiff was in possession of illegal contraband, or that plaintiff engaged in the possession of said control substances or had any access to said control substances.
20. Detective Erick Ortiz Shield 03383, with other NYPD police officers, fabricated a story that Plaintiff had committed a crime and prepared police reports stating such.

21. Several hours after his arrival at the 25th Precinct, the police took plaintiff at New York County Central Booking.
22. Plaintiff was incarcerated in a cell that was filthy and filled with garbage and excrement.
23. While plaintiff was confined in Central Booking, Erick Ortiz Shield 03383, with other police officers, misrepresented to a prosecutor employed by the New York City Special Narcotics Office that plaintiff had committed a crime. The aforesaid misrepresentations resulted in false criminal charging being filed against Plaintiff.
24. The New York City Special Narcotics Office filed a felony complaint bearing number 2011NY015580 charging plaintiff with criminal possession of a controlled substance in the third degree (N.Y. P.L. §220.16(1)).
25. On February 23, 2012, Plaintiff was arraigned on the felony complaint bearing number 2012NY015580. The court imposed a \$2,500.00 cash bail and required a “surety” hearing. Plaintiff remained incarcerated.
26. On or about March 5th, 2012, a “surety” hearing was held. Plaintiff’s surety was approved; that day Plaintiff was later released on bail and directed to return.
27. On or about March 27, 2012, Plaintiff was arraigned on the ensuing Indictment bearing number 904-N-2012 charging Plaintiff

was criminal possession of a controlled substance in the third degree (P.L. § 220.16(1)), to wit: heroin, with intent to sell. Plaintiff's release was continued on bail, and directed to return on May 16, 2012.

Defense counsel was directed to submit defense motions by April 13, 2012.

28. On May 16, 2012, in response to defense motions, the Supreme Court of the State of New York criminal term, New York County, (Stolz, J.) dismissed the indictment against Plaintiff for insufficient evidence, finding the Plaintiff's mere presence in the apartment was insufficient to establish constructive possession of the drugs found in a bedroom. No appeal of that decision ensued.

29. Plaintiff suffered damage as a result of defendants' actions. Plaintiff suffered emotional distress, mental anguish, fear, embarrassment, humiliation, discomfort, pain, bruising, and loss of liberty.

PLAINTIFF'S FEDERAL CLAIMS AGAINST DETECTIVE ERICK ORTIZ AND JOHN DOES 1-4

30. Plaintiff repeats and re-alleges the allegations contained in ¶¶ 1-29 as if fully set forth herein.

31. The conduct of Detective Erick Ortiz Shield 03383 and John Does 1-4, as described herein, amounted to false arrest, excessive force, an illegal strip search, and fabrication of evidence in violation of 42

U.S.C. §1983 and the Fourth Sixth and Fourteenth Amendments to the United States Constitution.

PLAINTIFF'S STATE LAW CLAIMS AGAINST DETECTIVE ERIC ORTIZ AND JOHN DOES 1-4

32. Plaintiff repeats and re-alleges the allegations contained in ¶¶1-31 as if fully set forth herein.

33. The conduct of Detective Erick Ortiz Shield 03383 and John Does 1-4, as described herein, amounted to false arrest, assault, battery, an illegal strip search, and fabrication of evidence in violation of New York State law.

PLAINTIFF'S FEDERAL CLAIMS AGAINST THE CITY OF NEW YORK

34. Plaintiff repeats and re-alleges the allegations contained in ¶¶1-33 as if fully set forth herein.

35. The City of New York directly caused the constitutional violations suffered by Plaintiff.

36. Upon information and belief, the City of New York, at all relevant times herein, was aware from notices of claim, lawsuits, complaints filed with the City, and from the City's own observations that officers employed in the Narcotic Boro. Manhattan North Division are unfit and who frequently commit the acts alleged herein. Nevertheless, the City of

New York exercised deliberate indifference by failing to take remedial action. The City failed to properly train, retain, supervise, discipline, and monitor the officers and improperly retained and utilized them.

Moreover, upon information and belief, the City of New York failed to adequately investigate prior complaints filed against the officers.

37. The aforesaid conduct by the City of New York violated plaintiff's rights under 42 U.S. C. §1983 and the Fourth, Sixth and Fourteenth Amendments to the United States Constitution.

PLAINTIFF'S STATE CLAIMS AGAINST THE CITY OF NEW YORK

38. Plaintiff repeats and re-alleges the allegations contained in ¶¶1-37 as if fully set forth herein.

39. A notice of claim was duly filed on the City of New York within 90 days of the arrest of plaintiff, more than 30 days have elapsed since such filing, and the City has not settled plaintiff's state law claims.

40. Because Detective Erick Ortiz Shield 03383 and John Does 1-4 were acting within the scope of their employment as members of the NYPD's Narcotic Boro. Manhattan North Division and who were involved in the arrest of plaintiff and the torts arising thereof, the City of New York is vicariously liable under state law for false arrest, false imprisonment, assault, battery, and an illegal strip search.

41. Further, for the reasons stated in ¶36, the City is liable under state law for negligent training, supervision and retention of Detective Erick Ortiz Shield 03383 and John Does 1-4.

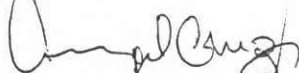
WHEREFORE, Plaintiff demands a jury trial and the following relief jointly and severally against the defendants:

- a. Compensatory damages in an amount to be determined by a jury;
- b. Punitive damages in an amount to be determined by a jury;
- c. Costs, interest and attorney's fees;
- d. Such other and further relief as this Court may deem just and proper, including injunctive and declaratory relief.

Dated: January 9th, 2013
New York, N.Y.

MALDONADO & CRUZ, PLLC.

/s/



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TO: New York City Corporation Counsel
100 Church Street
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Plaintiff.

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THE CITY OF NEW YORK, DETECTIVE
ERIC ORTIZ Shield 03383 and
John Does 1-4

Defendants.
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COMPLAINT

Attorney for Plaintiff

MALDONADO & CRUZ, LLP

*61 Broadway – Suite 1030
New York, New York 10006
Tel.: (646) 592-0657
By Angel Cruz, Esq. (AC0790)*

*Dated: January 9th, 2012
New York, New York*

Signature 
Print Signer's Name: ANGEL CRUZ, Esq. (AC0790)

TO: New York City Corporation Counsel
100 Church Street
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